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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF LOS ANGELES**

14

15 DANIEL ALWAY,

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17 Plaintiff,

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19 vs.

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21 CHASE METALS, LLC, a California
22 foreign limited liability company; CHASE
23 METALS INC., a California foreign
24 corporation; LUCAS ASHER; GRAHAM
25 NORRIS; SIMON BATASHVILI; and
DOES 1 through 25, Inclusive,

Defendants.

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) CASE NO. BC720250
)) [Consolidated with BC719773]
))
)) [Assigned to the Honorable Mel Red
)) Recana, Department 45, for all purposes]
))
)) *Complaint filed 08/31/2018*
))
)) FIRST AMENDED COMPLAINT FOR
)) DAMAGES
))
)) 1. BREACH OF WRITTEN CONTRACT
)) 2. BREACH OF ORAL CONTRACT
)) 3. BREACH OF THE IMPLIED
)) COVENANT OF GOOD FAITH AND
)) FAIR DEALING
)) 4. FRAUD (INTENTIONAL
)) MISREPRESENTATION)
)) 5. FRAUD (NEGLIGENT
)) MISREPRESENTATION)
)) 6. CONVERSION
)) 7. ACCOUNTING
)) 8. VIOLATION OF LABOR CODE
)) SECTION 226(a)
)) 9. VIOLATION OF BUSINESS AND
)) PROFESSIONS CODE § 17200
)) 10. VIOLATION OF LABOR CODE §201
)) AND FOR PENALTIES UNDER
)) LABOR CODE §203

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Plaintiff DANIEL ALWAY alleges:

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INTRODUCTION

1. In early 2017, DANIEL ALWAY (“Plaintiff”) was solicited by Defendants CHASE METALS, LLC, CHASE METALS INC., LUCAS ASHER (“ASHER”), GRAHAM NORRIS (“NORRIS”), SIMON BATASHVILI (“BATASHVILI”), and/or DOES 1 through 5 (collectively “EMPLOYER” or “Defendants”) for a position as EMPLOYER’s Vice President of Sales (the “Offer”).

2. Plaintiff is informed, believes, and thereon alleges that, at all times mentioned herein, Defendants ASHER, NORRIS, and BATASHVILI, and/or DOES 1 through 5 (collectively the “Principals”) were each the owners, operators, managers, employees, agents, supervisors, servants, partners, members, shareholders, officers, directors, co-conspirators, and/or alter ego of Defendants CHASE METALS, LLC and/or CHASE METALS INC (collectively the “Company”).

3. During the negotiation process, and before Plaintiff accepted the job, Defendants ASHER and BATASHVILI made material representations to Plaintiff in order to induce him to accept the Offer of employment with CHASE METALS, LLC and/or CHASE METALS INC. Specifically, but not exhaustively, Plaintiff was promised and told by the Principals that:

- a. *“You will make millions of dollars here”*
- b. *“You will make a million dollars this year”*
- c. *“We have plenty of money”*
- d. The company was sufficiently capitalized to fund its growth and meet its obligations.

4. Plaintiff met with Defendants ASHER and BATASHVILI on either April 6 or April 13 of 2017 at Baltaire's Restaurant in Los Angeles. During that meeting they promised that "*After about a year you will receive shares in the company;*" "*You will definitely make a million dollars your first year, but several millions as we grow;*" and "*We have two large hedge funds backing us.*"

5. On or about April 27, 2017, Defendants ASHER and BATASHVILI sent an email to Plaintiff attaching a “*letter of intent for the EVP of sales position with a 1mm YTD payout*”

1 (the “Letter of Intent”). The Letter of Intent proposed a start date of June 1, 2017 at an annual
2 salary of \$202,000, and “*Up to \$798,000 Performance-based bonus pay based on Employee’s*
3 *achievement of \$100,000,000 in commission based gross sales revenue for the annual period*
4 *commencing with Employee’s start date; payable at the end of each quarter following the*
5 *quarter in which the applicable sales revenue targets are met . . .”*

6 6. Between April 27, 2017 and May 1, 2017, Plaintiff met with Defendants ASHER
7 and BATASHVILI at Defendants' office to discuss the proposed compensation package. That
8 meeting was memorialized in a email that Plaintiff sent to ASHER and BATASHVILI on
9 May 1, 2017.

10 7. On or about May 1, 2017, Defendants ASHER and BATASHVILI emailed a
11 response to Plaintiff's May 1, 2017 email, indicating that Defendants would "*... need a few*
12 *business days to discuss internally with our team.*"

13 8. On or about May 18, 2017, Defendants ASHER and BATASHVILI sent another
14 email to Plaintiff attaching a revised offer letter (the “Second Letter of Intent”).

15 9. At the time of the Offer, and at all times during the pre-employment negotiations,
16 Plaintiff had a lucrative career with Wyndham Hotels & Resorts.

17 10. After months of negotiation, and in reliance on Defendants' representations,
18 Plaintiff turned down counteroffers from Wyndham Hotels & Resorts, accepted the Offer, and
19 left his long-term employment.

20 11. The specific terms of the Offer and the position as the Company's Vice President
21 of Sales (the "Position") were memorialized in a written agreement between Plaintiff and
22 Defendant LLC, the *Chase Metals Contractor Agreement* (the "Contractor Agreement"), and
23 were verbally ratified and confirmed by EMPLOYER (the "Oral Contract") both prior to and
24 during Plaintiff's employment.

25 ||| 12. On or about July 1, 2017, Plaintiff began his employment.

13. At all times mentioned herein, Plaintiff was a non-exempt employee.

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1 14. At all times mentioned herein, Defendants ASHER, NORRIS, and BATASHVILI
2 engaged Plaintiff, permitted him to work, and exercised control over Plaintiff's wages, hours
3 and/or working conditions.

4 15. During his employment, Plaintiff also provided services for BATASHVILI's other
5 business entities, including voice over and commercial work, upon BATASHVILI's specific
6 request. Plaintiff was not paid additional compensation for these services specific to
7 BATASHVILI's other business endeavors, evidencing a commingling of BATASHVILI's
8 personal interests and an alter-ego relationship between BATASHVILI and the corporate
9 entities, CHASE METALS, LLC and/or CHASE METALS INC.

10 16. During his employment, Plaintiff also provided services for ASHER's other
11 business entities, including voice over and commercial work, upon ASHER's specific request.
12 Plaintiff was not paid additional compensation for these services specific to ASHER's other
13 business endeavors, evidencing a commingling of ASHER's personal interests and an alter-
14 ego relationship between ASHER and the corporate entities, CHASE METALS, LLC and/or
15 CHASE METALS INC.

16 17. Pursuant to the Contractor Agreement and the Oral Contract (collectively the
17 "Employment Agreement") Plaintiff was to be compensated with a \$300,000 annual salary
18 plus Incentive Compensation as follows:

- 19 a. "\$500,000 for achievement of \$50,000,000 in gross sales revenue"
- 20 b. "\$750,000 for achievement of \$75,000,000 in gross sales revenue"
- 21 c. "\$1,000,000 for achievement of \$1,000,000,000 in gross sales revenue"

22 18. The Employment Agreement also provided that "*Incentive Compensation shall be*
23 *payable at the end of each quarter following the quarter in which the applicable sales revenue*
24 *targets are met . . .*"

25 19. Plaintiff received \$200,000 in merit bonuses and/or Incentive Compensation
26 throughout the year. However, Plaintiff was unable to determine the underlying basis for his
27 pay, including the merit bonus and/or Incentive Compensation calculations, because, in
28 violation of California law, EMPLOYER failed to itemize Plaintiff's earnings on his paycheck

1 stubs and failed to provide any basis whatsoever for the bonus amounts being paid.

2 20. Despite Plaintiff's repeated requests for monthly gross sales numbers, he was
3 never given an accounting of the gross sales revenue of the Company upon which his
4 Incentive Compensation was based.

5 21. As it turned out, Defendants' representations to Plaintiff about the financial
6 opportunity that the Position represented, and the Company's financial wherewithal to meet
7 EMPLOYER's obligations under the Employment Agreement, were false. Without
8 limitation, the true facts were that:

- 9 a. EMPLOYER could not afford Plaintiff's salary and Incentive Compensation;
- 10 b. Plaintiff did not earn millions of dollars, and did not receive his promised
11 Incentive Compensation.

12 22. On or about July 9, 2018, EMPLOYER told Plaintiff that his employment was
13 being terminated because the Company could not afford him (the "Termination").

14 23. Plaintiff is informed, believes, and thereon alleges that, at the time that the pre-
15 employment representations and promises were made to Plaintiff during negotiation of the
16 Offer, and later confirmed in the Employment Agreement, neither EMPLOYER nor the
17 Principals themselves believed them to be true. Plaintiff is informed, believes, and thereon
18 alleges that, to the contrary, Defendants' lies were carefully constructed to induce Plaintiff to
19 quit his job and accept the Offer to work for the Company.

20 24. At the time of the Termination, Defendant BATASHVILI told Plaintiff, in the
21 presence of Defendant ASHER, that the Company had grossed in excess of \$58M. On that
22 basis, and assuming that number is accurate, Plaintiff should have been paid Incentive
23 Compensation of \$500,000.

24 25. At the time of the Termination, EMPLOYER failed to pay Plaintiff for any of
25 Plaintiff's wages in arrears, including without limitation the Incentive Compensation, in
26 breach of the specific terms of the Employment Agreement.

27 26. Defendants' failure to pay Plaintiff's wages as promised is a violation of the
28 California Labor Code.

1 27. When Plaintiff asked Defendant BATASHVILI about the unpaid Incentive
2 Compensation, BATASHVILI replied that the base salary of \$300,000 was an offset against
3 the Incentive Compensation, and that Plaintiff had been paid a total of \$500,000. However,
4 the parties did not agree that there would be any offsets.

5 28. Plaintiff is informed, believes, and thereon alleges that he is owed a minimum of
6 \$300,000 under the plain language of the Contractor Agreement and pursuant to the Oral
7 Contract.

8 29. In early 2018, EMPLOYER began to pay Plaintiff partially as an employee, but
9 continued to pay the majority of his compensation as an independent contractor. Throughout
10 his employment, EMPLOYER failed to provide paycheck stubs to Plaintiff which complied
11 with California law.

12 30. To date, Plaintiff has not been paid his final paycheck in violation of California
13 *Labor Code* §201 and in breach of the specific terms of the Employment Agreement.

14 31. In addition to the foregoing, Plaintiff is owed damages, Labor Code penalties,
15 and/or restitution for:

- 16 a. Misclassification of his employment as an independent contractor;
- 17 b. Penalties under the Labor Code for unpaid wages; and
- 18 c. Waiting time penalties for every day that Plaintiff's wages are late, up to 30
19 days (*Labor Code* Sections 201 and 203).

20 32. Each of the Principals is individually liable for payment of Plaintiff's unpaid
21 wages under *Labor Code* Section 558.1(a), which provides:

22 “Any EMPLOYER or other person acting on behalf of an EMPLOYER,
23 who violates, or causes to be violated, any provision regulating minimum
24 wages or hours and days of work in any order of the Industrial Welfare
25 Commission, or violates, or causes to be violated, Sections 203, 226, 226.7,
26 1193.6, 1194, or 2802, may be held liable as the EMPLOYER for such
27 violation.”

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1 33. At all times mentioned herein, Defendants ASHER and BATASHVILI were “. . .
2 acting on behalf of . . . employer” and were each “. . . an owner, director, officer, or managing
3 agent of the employer” as set forth in *Labor Code* §558.1, and were authorized to and did
4 control all aspects of the employment relationship, including the payment of Plaintiff’s wages.

5 34. Paragraph 11H of the Contractor Agreement provides:

6 “In any action of proceeding initiated by Company to enforce any provision
7 of this Agreement, Company shall be entitled to its’ attorneys’ fees and
8 costs.”

9 35. Plaintiff is informed, believes, and thereon alleges that pursuant to the terms of the
10 Contractor Agreement, Plaintiff is entitled to his attorneys’ fees and costs as set forth in *Civil*
11 *Code* Section 1717, which provides that:

12 “(a) In any action on a contract, where the contract specifically provides that
13 attorney’s fees and costs, which are incurred to enforce that contract, shall
14 be awarded either to one of the parties or to the prevailing party, then the
15 party who is determined to be the party prevailing on the contract, whether
16 he or she is the party specified in the contract or not, shall be entitled to
17 reasonable attorney’s fees in addition to other costs.”

18 36. In or about July, 2018, Plaintiff discovered that EMPLOYER had made material
19 misrepresentations to the California Secretary of State, listing Plaintiff as the Chief Financial
20 Officer (“CFO”) on the Statement of Information for Defendant CHASE METALS INC.

21 37. Plaintiff never agreed to be the CFO for Defendant CHASE METALS INC. for
22 any purpose, including for the listing on the Statement of Information.

23 38. Plaintiff is informed, believes, and thereon alleges that Defendants’ intentional
24 designation of Plaintiff as the CFO for Defendant CHASE METALS INC. on the Statement of
25 Information constituted a fraud, exposing Plaintiff to substantial liability to both third parties
26 and to the State of California.

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GENERAL ALLEGATIONS

39. This is a complaint by an individual for damages arising out of the outrageous, oppressive and intrusive conduct of all Defendants. Plaintiff seeks compensatory and punitive damages.

40. The true names and capacities of the Defendants sued herein as DOES 1 through 25, inclusive, are unknown to Plaintiff, who therefore sues these Defendants by such fictitious names. Plaintiff will amend this Complaint to show their true names and capacities when same have been ascertained. Plaintiff is informed and believes, and thereon alleges, that each of the Defendants herein designated as a DOE proximately caused the injuries and damages to Plaintiff as hereinafter alleged.

41. Plaintiff is informed and believes, and thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the events and happenings herein referred to, and negligently, wantonly, recklessly, tortiously and/or unlawfully proximately caused the injuries and damages thereby to Plaintiff as herein alleged.

42. At all times relevant to this action, each of the fictitiously named Defendants was an owner, employee, agent, supervisor, servant, partner, member, shareholder, officer, director, co-conspirator, and/or alter ego of Defendants, and was acting within the course and scope of such agency or employment.

43. Plaintiff is informed, believes, and thereon alleges that at all times mentioned herein, Defendant CHASE METALS, LLC was a foreign limited liability company, existing under the laws of the State of California, and at all relevant times was conducting business in the County of Los Angeles, State of California, with its principal business location at 8383 Wilshire Blvd. 7th Floor, Beverly Hills, California 90211.

44. Plaintiff is informed, believes, and thereon alleges that at all times mentioned herein, Defendant CHASE METALS INC. was a foreign corporation, existing under the laws of the State of California, and at all relevant times was conducting business in the County of Los Angeles, State of California, with its principal business location at 8383 Wilshire Blvd. 7th Floor, Beverly Hills, California 90211.

45. Plaintiff is informed, believes, and thereon alleges that Defendant ASHER is and/or was a resident of the County of Los Angeles, State of California.

46. Plaintiff is informed, believes, and thereon alleges that Defendant BATASHVILI is and/or was a resident of the County of Los Angeles, State of California.

47. The acts complained of herein took place in the County of Los Angeles, State of California.

48. The contracts which are the subject matter of this Complaint were entered into and were to be performed in the County of Los Angeles, State of California.

49. At all times herein mentioned, Plaintiff was an individual who resided in the County of Los Angeles, State of California, and was and is a citizen of the State of California.

FIRST CAUSE OF ACTION

BREACH OF WRITTEN CONTRACT

(By Plaintiff DANIEL ALWAY Against Defendants

CHASE METALS, LLC and DOES 1 through 25)

50. The allegations of Paragraphs 1 through 49 are realleged and incorporated herein by reference except where to do so would be inconsistent with pleading a cause of action for Breach of Written Contract.

51. There existed a written contract, the Contractor Agreement, between Plaintiff on the one hand, and Defendants LLC and DOES 1 through 25 on the other hand, whereby Plaintiff and Defendants each had certain rights and responsibilities as herein alleged.

52. Plaintiff's reasonable reliance on, belief in, and acceptance in good faith of the Contractor Agreement, led him to believe that Defendants would fulfill their obligations under the Employment Agreement.

53. Plaintiff understood and duly performed all conditions of the Contractor Agreement to be performed by Plaintiff. Plaintiff has at all times been ready, willing, and able to perform and has offered to perform all the conditions of the Contractor Agreement to be performed by him.

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1 54. Despite the representations made to Plaintiff and the reliance he placed on them,
2 Defendants failed to carry out their responsibilities under the terms of the Contractor
3 Agreement and breached the Contractor Agreement as more particularly alleged herein.

4 55. As a proximate result of the aforesaid acts of Defendants, Plaintiff is owed
5 damages.

6 56. Plaintiff has incurred additional expenses, including attorneys' fees and costs of
7 suit, in an effort to recover the amount Defendants owe, all to his damage in an amount
8 according to proof at the time of trial.

9 Wherefore, Plaintiff prays for judgment against Defendants as hereinafter set forth.

10 **SECOND CAUSE OF ACTION**

11 **OF ORAL CONTRACT**

12 **(By Plaintiff DANIEL ALWAY Against Defendants**

13 **CHASE METALS, LLC, CHASE METALS INC.,**

14 **LUCAS ASHER, SIMON BATASHVILI and DOES 1 through 25)**

15 57. The allegations of Paragraphs 1 through 56 are realleged and incorporated herein
16 by reference except where to do so would be inconsistent with pleading a cause of action for
17 Breach of Oral Contract.

18 58. There existed an oral contract, the Employment Agreement, between Plaintiff on
19 the one hand, and Defendants CHASE METALS, LLC, CHASE METALS INC., LUCAS
20 ASHER, SIMON BATASHVILI and DOES 1 through 25 on the other hand, whereby Plaintiff
21 and Defendants each had certain rights and responsibilities as herein alleged.

22 59. Plaintiff's reasonable reliance on, belief in, and acceptance in good faith of the
23 Employment Agreement led him to believe that Defendants would fulfill their obligation
24 under the Oral Contract.

25 60. Plaintiff understood and duly performed all conditions of the contract to be
26 performed by Plaintiff. Plaintiff has at all times been ready, willing, and able to perform and
27 has offered to perform all the conditions of the contract to be performed by him.

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1 61. Despite the representations made to Plaintiff and the reliance he placed on them,
2 Defendants failed to carry out their responsibilities under the terms of the Employment
3 Agreement and breached the contract as more particularly alleged herein.

4 62. As a proximate result of the aforesaid acts of Defendants, Plaintiff is owed
5 damages.

6 63. Plaintiff has incurred additional expenses, including attorneys' fees and costs of
7 suit, in an effort to recover the amount Defendants owe, all to his damage in an amount
8 according to proof at the time of trial.

9 Wherefore, Plaintiff prays for judgment against Defendants as hereinafter set forth.

10 **THIRD CAUSE OF ACTION**

11 **BREACH OF THE IMPLIED COVENANT OF
12 GOOD FAITH AND FAIR DEALING**

13 **(By Plaintiff DANIEL ALWAY Against Defendants
14 CHASE METALS, LLC, CHASE METALS INC.,**

15 **LUCAS ASHER, SIMON BATASHVILI and DOES 1 through 25)**

16 64. The allegations of Paragraphs 1 through 63 are realleged and incorporated herein
17 by reference except where to do so would be inconsistent with pleading a cause of action for
18 Breach of the Implied Covenant of Good Faith and Fair Dealing.

19 65. The Employment Agreement contained an implied-in-law covenant of good faith
20 and fair dealing that the parties would act with fairness and good faith toward each other and
21 that the parties would do nothing to hinder or impair the rights of each other to receive and
22 enjoy the benefits of the agreement. The covenant further required that Defendants refrain
23 from needless injury or damage toward Plaintiff.

24 66. Defendants breached this covenant of good faith and fair dealing by engaging in
25 bad faith conduct extraneous to the terms of the Employment Agreement with the intent to
26 frustrate Plaintiff's enjoyment of the benefits therefrom, without good cause or a fair and
27 honest reason. Defendants engaged in surreptitious conduct in violation of their obligations
28 and duties under the Employment Agreement by depriving Plaintiff of salary, bonuses, and

1 other employment benefits that otherwise would have gone to Plaintiff and by improperly
2 listing him as CFO.

3 67. As a proximate result of the aforesaid acts of Defendants, Plaintiff is owed
4 damages.

5 68. Plaintiff has incurred additional expenses, including attorneys' fees and costs of
6 suit, in an effort to recover the amount Defendants owe, all to his damage in an amount
7 according to proof at the time of trial.

8 Wherefore, Plaintiff prays for judgment against Defendants as hereinafter set forth.

9 **FOURTH CAUSE OF ACTION**

10 **FRAUD**

11 **(Intentional Misrepresentation)**

12 **(By Plaintiff DANIEL ALWAY Against Defendants**

13 **CHASE METALS, LLC, CHASE METALS INC.,**

14 **LUCAS ASHER, SIMON BATASHVILI and DOES 1 through 25)**

15 69. The allegations of Paragraphs 1 through 68 are realleged and incorporated herein
16 by reference except where to do so would be inconsistent with pleading a cause of action for
17 Fraud Based on Intentional Misrepresentation.

18 70. In or about July, 2017, Defendants entered into the Employment Agreement with
19 Plaintiff, and made the specific promises and representations as more fully set forth herein.

20 71. The representations made by Defendants, and each of them, were in fact false.
21 The true facts were that EMPLOYER was severely undercapitalized, and was generally unable
22 to meet its obligations to the Company's employees and/or creditors, including Plaintiff.

23 72. When Defendants made the promises and representations to Plaintiff as alleged
24 herein, they knew them to be false, and they made these representations with the intention to
25 deceive and defraud Plaintiff and to induce him to act in reliance on these representations in
26 the manner alleged herein, or with the expectation that the Plaintiff would so act.

27 73. At the time these representations were made by Defendants, and each of them, and
28 when Plaintiff took the actions alleged herein, Plaintiff was ignorant of the falsity of

1 Defendants' representations and believed them to be true. In reliance on these representations,
2 Plaintiff was induced to and did rely on the representations in that Plaintiff acted in
3 accordance as alleged herein.

4 74. Had Plaintiff known the actual facts, he would not have entered into the
5 Employment Agreement or performed actions to his detriment as described herein. Plaintiff's
6 reliance on Defendants' representations was justified because Defendants presented
7 themselves to be a legitimate business with the financial wherewithal to perform under the
8 terms of the Employment Agreement as herein alleged.

9 75. Plaintiff is informed, believes, and thereon alleges that Defendants'
10 representations were made for the purpose of inducing Plaintiff to enter into the Employment
11 Agreement in order for Defendants to benefit from, without limitation, Plaintiff's labor,
12 efforts, skill, talents and expertise, his connections, professional networks, good-will, and
13 other business and personal resources of Plaintiff.

14 76. Plaintiff is informed, believes, and thereon alleges that Defendants had no
15 intention of performing on their promises under the Employment Agreement, and in fact had
16 the secret intention to not abide by the terms of the Employment Agreement.

17 77. Plaintiff was unaware of Defendants' intention not to be bound by their
18 representations, and justifiably believed and relied upon them, and was thereby induced to
19 enter into the Employment Agreement, and to refrain from and not pursue other employment
20 opportunities.

21 78. Plaintiff did not suspect the fraud and deceit practiced upon him until after he had
22 entered into the Employment Agreement. Thus, Plaintiff learned of the falsity of Defendants'
23 representations within the last two years.

24 79. As a proximate result of the representations of Defendants to Plaintiff as aforesaid,
25 Plaintiff has suffered and continues to suffer substantial monetary losses, and has also suffered
26 and continues to suffer embarrassment, humiliation, and mental anguish all to his damage in
27 an amount according to proof at time of trial, together with interest thereon at the maximum
28 rate permitted by law.

1 80. Defendants, and each of them, committed the acts alleged herein maliciously,
2 fraudulently and oppressively, with the wrongful intention of cheating and injuring Plaintiff,
3 from an improper and evil motive amounting to malice, and in conscious disregard of
4 Plaintiff's rights. On that basis, Plaintiff seeks punitive and exemplary damages from
5 Defendants in an amount to be proven at time of trial, for their wrongful acts and as a means
6 of punishing them and by way of example to deter such behavior in the future as being
7 contrary to sound public policy.

8 Wherefore, Plaintiff prays for judgment against Defendants as hereinafter set forth.

FIFTH CAUSE OF ACTION

FRAUD

(Negligent Misrepresentation)

(By Plaintiff DANIEL ALWAY Against Defendants

CHASE METALS, LLC, CHASE METALS INC.,

LUCAS ASHER, SIMON BATASHVILI and DOES 1 through 25)

15 81. The allegations of Paragraphs 1 through 80 are realleged and incorporated herein
16 by reference except where to do so would be inconsistent with pleading a cause of action for
17 Fraud Based on Negligent Misrepresentation.

18 82. In or about July, 2017, Defendants, and each of them, entered into the
19 Employment Agreement with Plaintiff, and made specific promises and representations as
20 more fully set forth herein.

21 83. The representations made by Defendants were in fact false. The true facts were
22 that EMPLOYER was severely undercapitalized, and was generally unable to meet its
23 obligations to its employees and/or creditors, including Plaintiff.

24 84. When Defendants, and each of them, made specific promises and representations
25 they had no reasonable grounds for believing them to be true.

26 85. At the time these representations were made by Defendants, and each of them, and
27 when Plaintiff took the actions alleged herein, Plaintiff was ignorant of the falsity of
28 Defendants' representations and believed them to be true. In reliance on these representations,

1 Plaintiff was induced to and did rely on the representations in that Plaintiff acted in
2 accordance as alleged herein.

3 86. Had Plaintiff known the actual facts, he would not have entered into the
4 Employment Agreement or performed actions to his detriment as described herein. Plaintiff's
5 reliance on Defendants' representations was justified because Defendants presented
6 themselves to be a legitimate business with the financial wherewithal to perform under the
7 terms of the Employment Agreement as herein alleged.

8 87. Plaintiff is informed, believes, and thereon alleges that Defendants' negligent
9 misrepresentations were made for the purpose of inducing Plaintiff to enter into the
10 Employment Agreement in order for Defendants to benefit from, without limitation,
11 Plaintiff's labor, efforts, skill, talents and expertise, his connections, professional networks,
12 good-will, and other business and personal resources of Plaintiff.

13 88. Plaintiff is informed, believes, and thereon alleges that Defendants lacked the
14 financial wherewithal to perform on their promises under the Employment Agreement.

15 89. Plaintiff was unaware of Defendants' inability to act in accordance with their
16 negligent misrepresentations, and justifiably believed and relied upon them, and was thereby
17 induced to enter into the Employment Agreement, and to refrain from and not pursue other
18 employment opportunities.

19 90. Plaintiff did not suspect the fraud and deceit practiced upon him until after he had
20 entered into the Employment Agreement. Thus, Plaintiff learned of the falsity of Defendants'
21 representations within the last two years.

22 91. As a proximate result of the negligent misrepresentations by Defendants to
23 Plaintiff as aforesaid, Plaintiff has suffered and continues to suffer substantial monetary
24 losses, and has also suffered and continues to suffer embarrassment, humiliation, and mental
25 anguish all to his damage in an amount according to proof at time of trial, together with
26 interest thereon at the maximum rate permitted by law.

27 Wherefore, Plaintiff prays for judgment against Defendants as hereinafter set forth.

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SIXTH CAUSE OF ACTION

CONVERSION

(By Plaintiff DANIEL ALWAY Against Defendants

**CHASE METALS, LLC, CHASE METALS INC., LUCAS ASHER,
GRAHAM NORRIS, SIMON BATASHVILI and DOES 1 through 25**

92. The allegations of Paragraphs 1 through 91 are realleged and incorporated herein by reference except where to do so would be inconsistent with pleading a cause of action for Conversion.

93. As more fully set forth above, Defendants, and each of them made promises to Plaintiff to pay him a \$300,000 annual salary plus Incentive Compensation as follows:

- a. “\$500,000 for achievement of \$50,000,000 in gross sales revenue
- b. \$750,000 for achievement of \$75,000,000 in gross sales revenue
- c. \$1,000,000 for achievement of \$1,000,000,000 in gross sales revenue”

94. Defendants failed and refused to pay these funds to Plaintiff. These funds are still in the possession of Defendants and are specific and identifiable.

95. By failing and refusing to pay the identified sum to Plaintiff, Defendants, and each of them disposed of Plaintiff's property (the money owed to him) in a manner that is inconsistent with Plaintiff's property rights.

96. As a proximate result of the conversion by Defendants, and each of them, Plaintiff is entitled to the return of the wages and the value of the benefits converted by Defendants, and each of them, in an amount according to proof at the time of trial.

97. Plaintiff is further entitled to compensation for the time and money expended in pursuit of the converted property, including attorneys' fees pursuant to California law.

98. In doing the acts herein alleged, Defendants, and each of them, acted with oppression, fraud, malice, and in conscious disregard of the rights of Plaintiff, and Plaintiff is therefore entitled to punitive damages in an amount according to proof at the time of trial.

Wherefore, Plaintiff prays for judgment against Defendants as hereinafter set forth.

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SEVENTH CAUSE OF ACTION

ACCOUNTING

(By Plaintiff DANIEL ALWAY Against Defendants

**CHASE METALS, LLC, CHASE METALS INC., LUCAS ASHER,
GRAHAM NORRIS, SIMON BATASHVILI and DOES 1 through 25**

99. The allegations of Paragraphs 1 through 98 are realleged and incorporated herein by reference except where to do so would be inconsistent with pleading a cause of action for Accounting.

100. Defendants, and each of them, collected sums of money for services, sales and profits which otherwise would have gone to Plaintiff. The sums of monies wrongfully diverted from Plaintiff to Defendants is not presently known nor ascertainable by Plaintiff. Plaintiff therefore seeks an order requiring Defendants, and each of them, to provide an accounting of all monies generated, received and earned by virtue of the wrongful diversion of revenues that otherwise would have gone to Plaintiff.

Wherefore, Plaintiff prays for judgment against Defendants as hereinafter set forth.

EIGHTH CAUSE OF ACTION

VIOLATION OF LABOR CODE SECTION 226(a)

(By Plaintiff DANIEL ALWAY Against Defendants

CHASE METALS, LLC, CHASE METALS INC., LUCAS ASHER,

GRAHAM NORRIS, SIMON BATASHVILI and DOES 1 through 25)

101. The allegations of Paragraphs 1 through 100 are realleged and incorporated herein by reference except where to do so would be inconsistent with pleading a cause of action for Violation of *Labor Code* Section 226(a).

102. California *Labor Code* § 226(a) requires an employer to provide accurate wage statements to an employee. In doing the things herein alleged, Defendant EMPLOYER failed to provide accurate wage statements to Plaintiff.

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1 103. Plaintiff was a non-exempt employee, entitled to protections under the California
2 *Labor Code* and applicable Industrial Wage Orders. At all relevant times, EMPLOYER failed
3 to provide Plaintiff with properly itemized wage statements as required by *Labor Code* §226.

4 104. Plaintiff suffered injury as a result of Defendants' knowing and intentional failure
5 to provide him with properly itemized wage statements as required by law.

6 105. As a further and proximate result of the aforesaid acts of Defendants, Plaintiff has
7 incurred/continues to incur and is therefore entitled to recover penalties pursuant to the Labor
8 Code and necessary and reasonable attorneys' fees in order to enforce his rights and to obtain
9 benefits due him, all to his further damage in an amount according to proof.

10 106. *Labor Code* §226(e)(1) provides:

11 An employee suffering injury as a result of a knowing and intentional failure
12 by an employer to comply with subdivision (a) is entitled to recover the
13 greater of all actual damages or fifty dollars (\$50) for the initial pay period
14 in which a violation occurs and one hundred dollars (\$100) per employee for
15 each violation in a subsequent pay period, not to exceed an aggregate
16 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs
17 and reasonable attorney's fees.

18 107. Plaintiff is entitled to the statutory maximum of \$4,000, plus an award of
19 attorney's fees and costs for the violations.

20 108. Plaintiff is informed, believes, and thereon alleges that each of the Principals is
21 individually liable for payment of Plaintiff's unpaid wages under *Labor Code* Section
22 558.1(a).

23 Wherefore, Plaintiff prays for judgment against the Defendants as hereinafter set forth.

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NINTH CAUSE OF ACTION

UNFAIR BUSINESS PRACTICES

[Violation of Business and Professions Code § 17200]

(By Plaintiff DANIEL ALWAY Against Defendants

CHASE METALS, LLC, CHASE METALS INC., LUCAS ASHER,

GRAHAM NORRIS, SIMON BATASHVILI and DOES 1 through 25)

109. The allegations of Paragraphs 1 through 108 are realleged and incorporated herein by reference except where to do so would be inconsistent with pleading a cause of action for Unfair Business Practices in violation of *Business and Professions Code* § 17200.

110. During the period of Plaintiff's employment with Defendants, Plaintiff was a non-exempt employee, entitled to protections under the California *Labor Code* and applicable Industrial Wage Orders.

111. California law presumes an employment relationship once evidence has been presented that an individual provided services for an employer. The burden then shifts to the employer to prove, if it can, that the presumed employee was an independent contractor.

[*Narayan v. EGL, Inc.* (9th Cir. 2010) 616 F.3d 895, 900]

112. *Labor Code* § 226.8 provides:

(a) It is unlawful for any person or employer to engage in any of the following activities:

(1) Willful misclassification of an individual as an independent contractor.

113. During his employment, Plaintiff was misclassified as an independent contractor, was not paid for all of the hours that he worked, was not timely paid his earned wages when due, and was not paid the Incentive Bonus as promised

114. During the period of Plaintiff's employment with Defendants, Plaintiff was an employee of Defendants, as defined by California *Labor Code* § 350(b). However, EMPLOYER purposefully misclassified Plaintiff as an "Independent Contractor" because, by so doing, Defendants lowered their cost of doing business by means of, but not limited to, the following:

1 a. Defendants did not report or pay the EMPLOYER's share of federal or state
2 payroll taxes with respect to any of the funds paid to Plaintiff, as required by
3 federal and state law;

4 b. Defendants did not provide or pay for Workers Compensation insurance for
5 Plaintiff;

6 c. Defendants did not provide or pay for State Disability insurance for Plaintiff;
7 and

8 d. Defendants did not provide or pay for benefits to Plaintiff that other of
9 Defendants' employees received.

10 115. Plaintiff is informed, believes, and thereon alleges that in doing the things herein
11 alleged, Defendants engaged in unlawful conduct under, without limitation, the California
12 Labor Code, Industrial Work Orders, the California Code of Regulations (CCR), California
13 Unemployment Insurance Code (CUIC), and the Internal Revenue Code (IRC).

14 116. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
15 been financially harmed by the loss of, without limitation, tangible employment related
16 benefits, such as EMPLOYER's share of federal or state payroll taxes (including Social
17 Security and State Disability insurance withholding), and benefits that other of EMPLOYER's
18 employees received, such as paid health insurance, vacation, sick time, and other employer
19 provided benefits, according to proof at time of trial.

20 117. Defendants are strictly liable for engaging in unfair competition in violation of
21 *Business and Professions Code* §17200, et seq.

22 118. Defendants' conduct constitutes unfair competition pursuant to *Business and*
23 *Professions Code* §17200, et seq. The violations by EMPLOYER, as more particularly set
24 forth herein, constituted unlawful, unfair and/or fraudulent business acts or practices,
25 including, without limitation, Defendants' unlawful misclassification of Plaintiff's
26 employment, failure to pay earned wages, including without limitation Plaintiff's wages under
27 the Employment Agreement. Defendants thereby gained an unfair advantage over their
28 competitors.

1 119. Such business practices are fraudulent within the meaning of California *Business*
2 & *Professions Code* §17200, et seq. EMPLOYER willfully concealed the fact that Plaintiff's
3 employment rights were being violated, with the specific intent to deprive him of wages and
4 employment benefits, all to his detriment. Such business practices were also unfair to
5 EMPLOYER's competitors.

6 120. Plaintiff is entitled to restitution of all amounts unlawfully obtained by Defendants
7 as herein alleged.

8 121. Plaintiff is entitled to equitable relief, including without limitation attorneys' fees
9 under *Code of Civil Procedure* §1021.5, costs of suit, and restitution of all amounts
10 unlawfully obtained or withheld by Defendants as herein alleged.

11 122. As a direct and proximate result of the aforementioned violations of California law
12 committed by Defendants, Plaintiff has suffered, and continues to suffer, substantial losses
13 related to the loss of the EMPLOYER's share of payroll taxes, the use and enjoyment of such
14 employee benefits, and expenses and attorneys' fees in seeking to compel Defendants to fully
15 perform their obligation under state law, all to his damage in amounts according to proof at
16 time of trial, but in amounts in excess of the minimum jurisdiction of this Court. Plaintiff is
17 thus entitled to recover nominal, actual and compensatory damages in amounts according to
18 proof at time of trial, but in amounts in excess of the minimum jurisdiction of this Court.

19 123. *Labor Code* § 226.8 provides:

20 (b) If . . . a court issues a determination that a person or employer has
21 engaged in any of the enumerated violations of subdivision (a), the
22 person or employer shall be subject to a civil penalty of not less than
23 five thousand dollars (\$5,000) and not more than fifteen thousand
24 dollars (\$15,000) for each violation, in addition to any other penalties
25 or fines permitted by law.

26 124. Plaintiff claims such other and further damages permitted under the law in an
27 amount according to proof at time of trial.

28 Wherefore, Plaintiff prays for judgment against the Defendants as hereinafter set forth.

TENTH CAUSE OF ACTION

VIOLATION OF LABOR CODE §201

AND FOR PENALTIES UNDER LABOR CODE §203

(By Plaintiff DANIEL ALWAY Against Defendants

**CHASE METALS, LLC, CHASE METALS INC., LUCAS ASHER,
GRAHAM NORRIS, SIMON BATASHVILI and DOES 1 through 25)**

125. The allegations of Paragraphs 1 through 124 are realleged and incorporated herein by reference except where to do so would be inconsistent with pleading a cause of action for Violation of *Labor Code* §201 and for Penalties under *Labor Code* §203.

10 | 126. *Labor Code* Section 201 provides:

(a) If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

13 127. In doing the things herein alleged, EMPLOYER violated *Labor Code* §201 when
14 Defendants failed to pay Plaintiff's wages at the time of the Termination.

15 128. As a proximate result of the aforesaid acts of Defendants, Plaintiff has
16 incurred/continues to incur and is therefore entitled to recover:

- a. Unpaid wages;
- b. Waiting penalties pursuant to *Labor Code* Section 203;
- c. Penalties and damages permitted by the Labor Code;
- d. Interest under the Labor Code;
- e. Necessary and reasonable attorneys' fees in order to enforce his rights and to obtain benefits due him, all to his further damage in an amount according to proof; and
- f. All other damages allowed by law.

25 129. EMPLOYER's failure to pay Plaintiff's wages due and owing Plaintiff was willful
26 because EMPLOYER has failed to pay any portion of the amount due and owing to Plaintiff,
27 despite EMPLOYER's knowledge of the illegality of failing to pay Plaintiff's wages, and has
28 intentionally failed and refused to make payment as required by law.

130. Pursuant to *Labor Code* §203, Plaintiff is entitled to wages at his same rate of pay until paid or until suit is filed, for a period of up to 30 days.

Wherefore, Plaintiff prays for judgment against the Defendants as hereinafter set forth.

PRAYER

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For compensatory damages including losses arising from mental and emotional distress and other special and general damages on all Causes of Action in an amount in excess of \$500,000.00 and according to proof at trial;
2. For unpaid wages in an amount in excess of \$500,000.00 according to proof;
3. For a full accounting;
4. For attorneys' fees and costs, in an amount in excess of \$300,000.00 as allowed by law;
5. For penalties and wages under the *Labor Code* in an amount in excess of \$150,000.00;
6. For prejudgment interest on all amounts claimed, as allowed by law;
7. For an award of punitive damages in an amount in excess of \$500,000.00;
8. Restitution of unpaid monies pursuant to *Business & Professions Code* §17203; and
9. For such other and further relief as the Court deems just and proper.

DATED: May 20, 2019

FRAIGUN LAW GROUP

MARINA KATS PRAIGUN
Attorneys for Plaintiff
DANIEL ALWAY

Alway v. Chase Metals, et al.
LASC CASE NO. BC720250
PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 15250 Ventura Boulevard, Penthouse 1220, Sherman Oaks, CA 91403.

On May 20, 2019, I served the foregoing document described as FIRST AMENDED COMPLAINT FOR DAMAGES on Defendants and the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

[X] BY U.S. MAIL - By placing [X] a true copy thereof [] the original thereof, enclosed in a sealed envelope, addressed as set forth above, for collection and mailing on the date shown above following our ordinary business practices. I am readily familiar with this firm's practice for collection and processing correspondence for mailing with the U.S. Postal Service. On the same day that a sealed envelope is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service with postage fully prepaid.

[] (BY FACSIMILE) - The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2008(e)(4), I caused the machine to print a record of the transmission.

[] (BY HAND DELIVERY) - I handed the above-described document(s) to each of the aforementioned attorneys at _____.

[] (BY FEDERAL EXPRESS) - By placing [] a true copy thereof [] the original thereof in a sealed envelope in the Federal Express depository in the ordinary course of business.

[] (BY CERTIFIED MAIL/RETURN RECEIPT) - By placing [] a true copy thereof [] the original thereof in envelopes which were sealed. with postage thereon fully prepaid, in the United States mail at Los Angeles, California.

[X] STATE I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

[] FEDERAL I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on May 20, 2019, at Sherman Oaks, California.


Diana Rosenberg

Alway v. Chase Metals, et al.
LASC CASE NO. BC720250
SERVICE LIST

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